NO. COA 19-384 TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Plaintiff-Appellee, v. TIM MOORE, in his official capacity, PHILIP BERGER, in his official capacity, Defendants-Appellants.	From Wake County 18 CVS 9806

****

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF BY GOVERNOR ROY COOPER

****

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

The Honorable Roy Cooper, in his official capacity as Governor of the State of North Carolina ("the Governor"), by and through undersigned counsel and pursuant to North Carolina Rule of Appellate Procedure 28(i), respectfully moves for leave to file the accompanying *amicus curiae* brief in support of Plaintiff-Appellee North Carolina State Conference of the National Association for the Advancement of Colored People ("North Carolina NAACP").

***AMICUS CURIAE*'S INTEREST IN THIS CASE**

Elected to represent all citizens of North Carolina and sworn to uphold "the Constitution and laws of the United States, and the Constitution and laws of North Carolina," N.C. CONST. art III, §§ 2, 4; art. VI, § 7, the Governor accepts his responsibility to oppose political entrenchment because it subverts the will of the people. Since his election in November 2016, the Governor has challenged certain legislation enacted by the General Assembly seeking to entrench one political party in power and thus thwart the ability of the majority of the electorate to empower new or different candidates proposing new or different policy priorities.

The Governor seeks permission to participate as *amicus curiae* so that he may articulate the dangers of political entrenchment and demonstrate how such entrenchment denies the people of North Carolina their fundamental right to popular sovereignty.

REASONS WHY A BRIEF OF *AMICUS CURIAE* IS BELIEVED TO BE DESIRABLE

An *amicus curiae* brief from the Governor is desirable because he represents the people of North Carolina and has a duty to act in their best interests. Indeed, our Supreme Court has recognized that it is the "distinctive purpose" of the executive branch of State government to ensure that the laws are faithfully executed. *See State ex rel. McCrory v. Berger*, 368 N.C. 633, 635,

781 S.E.2d 248, 250 (2016). Given the history of constitutional litigation between the Governor and the General Assembly that proposed the constitutional amendments at issue, the Governor possesses a unique perspective on the dangers of unchecked political entrenchment.

ISSUES OF LAW TO BE ADDRESSED

If permitted to participate as *amicus curiae,* Governor Cooper will argue against political entrenchment, which injures the constitutionally guaranteed right to popular sovereignty. Relatedly, Governor Cooper will argue that the General Assembly was only able to muster the votes necessary for a supermajority (to propose the constitutional amendments at issue) by denying racial minorities the right to representative government guaranteed by the North Carolina Constitution. As a result, the voters who will be injured if the amendments are upheld are the same voters disenfranchised by the unconstitutional racial gerrymanders required to empower a legislative supermajority to propose those amendments.

* * * * *

WHEREFORE, Governor Cooper respectfully requests that this Court allow:

a. This motion for leave and accept the Governors' conditionally filed amicus brief; and

b. Such other and further relief as the Court deems just and proper.

Respectfully submitted this the 12th day of July, 2019.

Electronically Submitted
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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned counsel has this day served the foregoing document in the above-captioned action on all parties to this cause by depositing the original and/or a copy hereof, postage prepaid, in the United States Mail, addressed to the following:

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This the 12th day of July, 2019.

/s/ Daniel F. E. Smith
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BRIEF OF GOVERNOR ROY COOPER AS *AMICUS CURIAE*

(Submitted Pursuant to N.C. R. App. P. 28(i))

NO. COA 19-384 TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

Plaintiff-Appellee,

v.

TIM MOORE, in his official capacity, PHILIP BERGER, in his official capacity,

Defendants-Appellants.

From Wake County
18 CVS 9806

****

BRIEF OF GOVERNOR ROY COOPER AS *AMICUS CURIAE* SUPPORTING PLAINTIFF-APPELLEE NORTH CAROLINA NAACP

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NO. COA 19-384 TENTH DISTRICT

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****

BRIEF OF GOVERNOR ROY COOPER AS *AMICUS CURIAE* SUPPORTING PLAINTIFF-APPELLEE NORTH CAROLINA NAACP[1]

****

ARGUMENT

The North Carolina Constitution, to recognize and establish "the great, general, and essential principles of liberty and free government," declares in no uncertain terms that "[a]ll political power is vested in and derived *from the people*; all government of right originates *from the people*, is founded *upon their*

[1] Pursuant to N.C. R. App. P. 28(i)(2), no one but the Governor or his counsel, directly or indirectly, wrote this brief or contributed money for its preparation.

will only, and is instituted solely for the good of the whole." N.C. CONST. art. I, preamble; id. § 2 (emphases added).

This constitutional language reflects the foundational principle of this State and Nation, that "governments are instituted among men, deriving their just powers *from the consent of the governed*. . . ." United States Declaration of Independence ¶ 2 (1776) (emphasis added).

When one branch of government acts outside of its constitutional authority, it therefore falls to the other coordinate branches to check that excess. For the past two-and-a-half years, the Governor has had to call on our courts to correct the excesses of an unconstitutional, racially gerrymandered legislature. In this case, the courts are again asked to protect against efforts to entrench the policy preferences of a temporary governing majority. Such entrenchment creates unchecked, unaccountable government controlled by a singular faction, and frustrates separation of powers, the means by which popular sovereignty is preserved.

The two constitutional amendments at issue here represent a dangerous effort to entrench one party's political views within the solemn text of the North Carolina Constitution. The trial court properly rejected the attempt of an unconstitutional General Assembly to elevate its political preferences from

mere legislation into the organic law that provides the fundamental underpinnings of North Carolina government.

Notably, the North Carolina Constitution distinguishes between *statutes*, which are enacted by the General Assembly subject to the Governor's veto (which can be overridden by three-fifths of all *then-present members* of each house), N.C. CONST. art. II, § 22(1), and constitutional *amendments*, which must be initiated by three-fifths of *all members* of each house and are not subject to the Governor's veto. *See* N.C. CONST. art. II, § 22(2); *id.* art. XIII, § 4. Indeed, in Chief Justice Sarah Parker's forward to the leading treatise on our state's constitution, she recognizes that the North Carolina Constitution is "our foundational document" which "establishes our state's tripartite system of government in accordance with the fundamental principle of separation of powers." John V. Orth & Paul Martin Newby, THE NORTH CAROLINA STATE CONSTITUTION xix (2d ed. 2013). For his part, Justice Newby recognizes that constitutional litigation requires "returning to the fundamental principles recognized in [the North Carolina Constitution's] organic laws." *Id.* at xxii.

The fact that our Constitution does not provide the protection of a gubernatorial check on proposed amendments to the North Carolina Constitution makes judicial review of the process more important to prevent the type of entrenchment enjoined by the court below. Indeed, the North

Carolina Constitution "should be interpreted so as to carry out the general principles of the government and not defeat them." *Jenkins v. State Bd. of Elections of N. Carolina*, 180 N.C. 169, 169, 104 S.E. 346, 349 (1920). Without a judicial check on attempts to impose entrenchment directly into our organic law, the power of a supermajority legislature elected only as result of an unconstitutional gerrymander could become absolute, which corrupts absolutely.

I. Since Governor Cooper was elected in November 2016, the General Assembly has attempted to entrench its political views through legislation and—as this case shows—constitutional amendment.

The legislative actions which spawned this litigation are yet another chapter in the continuing saga of the General Assembly's efforts since 2016 to entrench the policy views of its unconstitutional supermajority. Since before Governor Cooper took office—and continuing until new representatives were seated following the November 2018 elections—the General Assembly took repeated actions which could only be interpreted as an attempt to ensure their retention of political power and to embed their preferred policies regardless of the voter's preferences. The legislative majority repeatedly attempted to: (a) restructure the State Board of Elections, legislatively appoint its Executive Director, and influence the execution and enforcement of election laws; (b) empower itself by enacting statutes that interfere with or remove

gubernatorial powers; (c) entrench political appointees of the outgoing Governor into the executive branch of the new Governor; (d) intimidate and interfere with the courts; and (e) exert control over how the executive branch enforces the law.

When those efforts were invalidated by the courts, the legislative leadership sought to take advantage of its unconstitutionally gerrymandered supermajority to enshrine in our Constitution what it could not achieve through statutory enactments.

All of these actions reflect a misguided legislative effort to entrench certain political preferences as the law of the land, not reflective of the will of the people. To be sure, this is not just the view of the Governor, but the view expressed by North Carolina trial and appellate courts faced with resolving constitutional disputes about the extent of legislative power in North Carolina. *See, e.g.*, *Cooper v. Berger and Moore*, Wake County Case No. 16 CVS 15636, 2017 WL 1433245, Order on Cross-Motions for Summary Judgment (N.C. Super. Mar. 17, 2017) (invalidating portions of Sessions Laws 2016-125 and 2016-126 relating to the State Board of Elections and the status of appointees to exempt positions because those provisions "prevent[ed] the Governor from taking care that the laws are faithfully executed" and therefore violated separation of powers); *Cooper v. Berger*, 370 N.C. 392, 809 S.E.2d 98 (2018)

(invalidating certain State Board of Elections provisions in Session Law 2017-6 on separation of powers grounds); *State ex rel. Cooper v. Berger et al.*, Wake County Case No. 17 CVS 6465, Order and Judgment (December 3, 2018) (invalidating certain portions of Session Law 2016-125 related to appointments and chairmanship of the Industrial Commission on separation of powers grounds).[2]

The trial court in this case hewed to the principles articulated by these earlier courts, each of which recognized that the efforts by the unconstitutionally gerrymandered legislative majority were designed to keep that majority in office and its policies enforced, no matter what the majority of the electorate actually desires. One example of the legislative majority's attempts to entrench their policy views occurred just before Governor Cooper took office, when the General Assembly re-classified political appointees of the

---

[2] In its permanent injunction of certain portions of Session Law 2016-125 related to appointments and chairmanship of the Industrial Commission, the Wake County Superior Court noted the General Assembly's (unconstitutional) efforts at entrenchment. Specifically, no explanation or legislative history justified granting "a single appointee named by an outgoing Governor and confirmed by an outgoing General Assembly . . . an extended term on the Industrial Commission. . . ." *State ex rel. Cooper v. Berger et al.*, Wake County Case No. 17 CVS 6465, Order and Judgment at 8 ¶ 26 (December 3, 2018). Similarly, provisions of Session Law 2016-125 preventing the Governor from appointing the chair and vice-chair of the Industrial Commission "for the entirety of his first term" unconstitutionally prevented the Governor from faithfully executing our State's workers' compensation laws and "directly conflict[ed] with the electorate's selection of Governor Cooper and the policies he was elected to pursue." *Id.* at 15 ¶¶ 57, 59, 60.

outgoing Governor as permanent State employees entitled to career service protections. This attempted entrenchment was struck down as unconstitutional by a majority ruling of a three-judge panel, which held:

> [T]he General Assembly has *effectively appointed* hundreds of employees in the heart of the executive branch.
>
> . . . Moreover, the Exempt Positions Amendments, by affording "career" status to those employees who were exempt in the prior administration, has also substantially limited the Governor's ability to remove them. . . .
>
> The Court concludes that under [*State ex rel.*] *McCrory* [*v. Berger*], the Exempt Positions Amendments violate the North Carolina Constitution because they leave the Governor "with little control over the views and priorities of the officers" holding key decision-making positions in the executive branch. 368 N.C. at 647, 781 S.E.2d at 257.

Cooper v. Berger and Moore, Wake County Case No. 16 CVS 15636, 2017 WL 1433245 at *13 ¶¶ 6-8, Order on Cross-Motions for Summary Judgment (N.C. Super. Mar. 17, 2017) (emphasis added). Following the trial court ruling, the General Assembly repealed the offending legislation.

But the General Assembly's efforts at entrenchment did not stop there. For more than two years—and despite losing four times in the courts—the legislature tried to dismantle the elections oversight structure that had served North Carolina for more than 100 years. The legislative majority did so in order to tilt our State's elections policies in their favor and to entrench their political views. The legislature first attempted through Session Law 2016-125

(December 19, 2016) to exercise direct control over the State Board's implementation of election laws. A three-judge panel held:

> Because they reserve too much control in the legislature—and thus block the Governor from ensuring faithful execution of the laws—the Court concludes that the Board of Elections Amendments are unconstitutional. With regard to the Findings of Facts and Conclusions of Law involving the Board of Elections issues, the Three-Judge panel is UNANIMOUS in its decision.

Cooper v. Berger and Moore, Wake County Case No. 16 CVS 15636, 2017 WL 1433245 at *8 ¶ 23, Order on Cross-Motions for Summary Judgment (N.C. Super. Mar. 17, 2017).

Undeterred, the General Assembly again tried to restructure the State Board of Elections, enacting Session Law 2017-6 (April 25, 2017), which our Supreme Court held unconstitutional:

> [W]e conclude that the relevant provisions of Session Law 2017-6, when considered as a unified whole, "leave[ ] the Governor with little control over the views and priorities" of the Bipartisan State Board [of Elections], by requiring that a sufficient number of its members to block the implementation of the Governor's policy preferences be selected from a list of nominees chosen by the leader of the political party other than the one to which the Governor belongs, limiting the extent to which individuals supportive of the Governor's policy preferences have the ability to supervise the activities of the Bipartisan State Board, and significantly constraining the Governor's ability to remove members of the Bipartisan State Board.
>
> . . . .

> [T]he manner in which the membership of the Bipartisan State Board is structured and operates under Session Law 2017-6 impermissibly, facially, and beyond a reasonable doubt interferes with the Governor's ability to ensure that the laws are faithfully executed as required by Article III, Section 5(4) of the North Carolina Constitution.

Cooper, 370 N.C. at 416, 418, 809 S.E.2d at 112–13, 114 (citations and footnotes omitted).

Notably, instead of declaring the whole of Session Law 2017-6 to be unconstitutional, our Supreme Court in *Cooper* expressly declined to reach issues regarding the constitutionality of the legislative appointment of the Executive Director of the State Board and the structuring of county boards of elections. *See id.* at 418-21, 809 S.E.2d at 114-16. That is, out of respect for, and deference to, the legislative power of a coordinate branch, the Court allowed the legislature another opportunity to craft a constitutional statute. Not surprisingly, this unconstitutionally gerrymandered legislature disregarded that opportunity.

Instead of repealing Session Law 2017-6 and creating a constitutional structure for the State Board of Elections, the legislature retained the un-amended, un-repealed portions of Session Law 2017-6 and enacted Part VIII of Session Law 2018-2 (March 16, 2018) to create yet another iteration of a legislatively influenced Board of Elections. The same three-judge panel—which had duly considered the legislature's two previous attempts to

restructure the State Board—heard argument on 26 July 2018 and on 16 October 2018 found "the challenged Acts in their entirety are unconstitutional" and permanently enjoined "Part VIII of Session Law 2018-2 in its entirety, and sections 3 through 22 of Session Law 2017-6 in their entirety." *Cooper v. Berger et al.*, Wake County Case No. 18 CVS 3348, Order at 22 ¶ 83 (N.C. Super. October 16, 2018).

Rather than accepting the well-considered opinions of trial and appellate courts—and perhaps recognizing that its statutory attempts at entrenchment would continue to run afoul of the North Carolina Constitution—the legislature doubled down, proposing a constitutional amendment to establish a State Board of Elections entirely composed of legislative nominees.

But even then, the legislature tried to rig the vote by offering a misleading description of the amendment. That amendment was enjoined as unconstitutional by a three-judge panel of superior court judges, who "conclude[d] beyond a reasonable doubt that this portion of the ballot language in the Board Appointments Proposed Amendment does not sufficiently inform the voters and is not stated in such manner as to enable them intelligently to express their opinion upon it." *Cooper v. Berger et al. and NC NAACP v. Moore et al.*, Wake County Case Nos. 18 CVS 9805 & 9806, Order on Injunctive Relief at 25 ¶ 55 (August 21, 2018). The General Assembly then proposed a second

amendment relating to the State Board of Elections (set forth in Session Law 2018-133), which was rejected by the voters of North Carolina at the November 2018 election.

At issue in this case are two proposed constitutional amendments[3] that were ultimately approved by a majority of voters—the photo identification amendment of Session Law 2018-128 and the income tax cap of Session Law 2019-119. But those amendments fail the constitutional requirement that they be initiated by "three-fifths of *all the members* of each house," N.C. CONST. art. XIII, § 4 (emphasis added), because the three-fifths majorities necessary to propose such amendments would not have existed but for the unconstitutional gerrymandering of the General Assembly.

Notably, North Carolina's constitutional history includes many proposed constitutional amendments which, though they may have promoted good government, never reached the people because the General Assembly did not propose the amendments to the people. For example:

- The 1929 General Assembly rejected the Governor's short ballot constitutional amendment to reduce the number of elected executive officers. Arch T. Allen, III, *A Study in Separation of Powers: Executive Power in North Carolina*, 77 N.C. L. REV. 2049, 2061 (1999). So did the 1931 General Assembly. *Id.* at 2062.

- The 1957 constitutional study commission authorized at the request of the Governor proposed rewriting the Constitution, "but the General

[3] The relief sought here is properly limited to the invalidation of constitutional amendments sent to the voters by an unconstitutionally gerrymandered legislature.

Assembly did not approve submission of the proposal to the voters." *Id.* at 2065.

- Certain amendments proposed by the 1968 Study Commission were rejected in the General Assembly. *See id.* at 2068 ("The General Assembly, however, did not ratify Commission proposals concerning gubernatorial succession, veto power, or the short ballot. . . .").

It is thus misleading to suggest—as Defendant-Appellants appear to do—that the General Assembly plays a minor role and the people themselves control the process of amending the North Carolina Constitution. Instead, the General Assembly serves a critical role as gatekeeper for any constitutional amendments, which should be closely considered, carefully drafted, and painstakingly revised to avoid inserting faults in the organic foundation of North Carolina government and the rule of law. When, as here, the gatekeeper function has devolved to a legislature that has unconstitutionally attempted to entrench itself, that function is irreparably broken.

The legislature alone is not the State of North Carolina. *Cf.* THE FEDERALIST No. 71 (Alexander Hamilton) ("The representatives of the people, in a popular assembly, seem sometimes to fancy that that they are the people themselves, and betray strong impatience and disgust at the least sign of opposition from any other quarter. . . ."). Instead, the State consists of the people and their three co-equal and coordinate branches of government. When the legislature oversteps its authority, it is incumbent upon both the Governor

and the judiciary, when required, to protect and enforce constitutional guarantees.

Here, the trial court did just that, and nothing more. Recognizing that the General Assembly's own unconstitutional gerrymandering had opened the door of the henhouse, the trial court simply ordered the fox to get out and close the door behind him.

II. The widespread and serious racial gerrymanders in North Carolina resulted in a General Assembly not representative of the people in violation of the people's fundamental right to sovereignty. Such an unrepresentative General Assembly cannot be permitted to entrench its policies in the North Carolina Constitution.

Because voting is the mechanism through which people confer power in a government, "the Supreme Court has long recognized that the 'right to vote freely for the candidate of one's choice is of the essence of a democratic society.' " *Covington v. North Carolina*, 270 F. Supp. 3d 881, 890 (M.D.N.C. 2017) *("Covington II")* (quoting *Reynolds v. Sims,* 377 U.S. 533, 555 (1964)). "Accordingly, because the right to vote is 'preservative of all rights,' any infringement on that right . . . strikes at the heart of the substantive rights and privileges guaranteed by our Constitution." *Id.* (quoting *Reynolds*, 377 U.S. at 562-63).

In a comprehensive review of the racial gerrymanders that gave the General Assembly the supermajority needed to pass the constitutional amendments at issue here, the federal three-judge panel in *Covington II* held:

> Taken together, the effects of the racial gerrymanders identified by the Court—and affirmed by the Supreme Court—are widespread, serious, and longstanding. Beyond the immediate harms inflicted on Plaintiffs and other voters who were unjustifiably placed within and without districts based on the color of their skin, Plaintiffs—along with millions of North Carolinians of all races—have lived and continue to live under laws adopted by a state legislature elected from unconstitutionally drawn districts.

270 F. Supp. 3d at 894.

The *Covington II* court also found that "[t]he widespread scope of the constitutional violation at issue—unjustifiably relying on race to draw lines for legislative districts encompassing the vast majority of the state's voters—also means that the districting plans intrude on popular sovereignty." *Id.* at 897. This "strikes at the heart of the substantive rights and privileges guaranteed by our Constitution," because "the districting plans interfered with the very mechanism by which the people confer their sovereignty on the General Assembly and hold the General Assembly accountable." *Id.* at 890, 897. As such, the court held that

> [t]he harms attendant to unjustified race-based districting do not end with the enactment of an unconstitutional districting scheme. Quite the opposite, these harms begin with the enactment of unconstitutional maps; are inflicted

> again and again with the use of those maps in each subsequent election cycle; and, by putting into office legislators acting under a cloud of constitutional illegitimacy, continue unabated until new elections are held under constitutionally adequate districting plans.

Id. at 891.

In addition to the serious and widespread abridgement of North Carolinians' popular sovereignty, the *Covington* panel emphasized the particular harms associated with the racial nature of the gerrymandering. First, "[r]ace-based districting . . . sends the 'pernicious' message to representatives that 'their primary obligation is to represent only the members of [a single racial] group.' " *Covington v. North Carolina*, No. 1:15CV399, 2017 WL 44840, at *3 (M.D.N.C. Jan. 4, 2017) (quoting *Shaw v. Reno,* 509 U.S. 630, 648 (1993)). This message is "'altogether antithetical to our system of representative democracy,' raising the specter that the electorate will be 'balkanize[d] . . . into competing racial factions' and threatening 'to carry us further from the goal of a political system in which race no longer matters[.]'" *Covington II,* 270 F. Supp. 3d at 891 (quoting *Shaw,* 509 U.S. at 648, 657) (citations omitted).

Here, the "inherent, sole, and exclusive" right of the people of North Carolina to choose their own government was significantly and repeatedly abridged during each of the three election cycles for which North Carolina

citizens elected their representatives through districts found to be unconstitutional racial gerrymanders. *See Covington II,* 270 F. Supp. 3d at 894 ("[R]egarding duration, as Plaintiffs rightly emphasize, these harms have persisted for over six years, tainting three separate election cycles and six statewide elections."). While Defendant-Appellants attempt to analogize the gerrymanders at bar with "unfair" or "malapportioned" legislatures in other jurisdictions, (Def.'s Br. p 25), the gerrymanders underlying this case are "among the largest racial gerrymanders ever encountered by a federal court." *Covington II,* 270 F. Supp. 3d at 884. Additionally, the impact of the unconstitutional racial gerrymanders is "not limited to the eight million voters in districts with lines drawn based on an unjustified consideration of race." *Id.* at 893. "Rather, the districting plans adversely affect *all* North Carolina citizens to the extent their representatives are elected under a districting plan that is tainted by unjustified, race-based classifications." *Id.* (emphasis in original).

Because the racial gerrymanders abridged the popular sovereignty of *all* North Carolinians for six years, the General Assemblies elected thereunder were unrepresentative, lacking power "derived from the people" to amend our Constitution. As a result, this Court should affirm the trial court's judgment that the constitutional amendments in this case are void and of no effect.

It bears emphasis that the racial nature of these gerrymanders presents additional harms that further delegitimize the two constitutional amendments challenged by Plaintiff-Appellee North Carolina NAACP. Permitting these amendments to take effect will entrench the policy preferences of an illegitimate legislature into North Carolina's organic law. Specifically, the voter identification amendment will disproportionately impact racial minorities, who—based on the experience with such laws nationwide—more frequently lack identification, regularly suffer discriminatory enforcement, and tend to turn out in lower numbers when such laws are operative. And the tax cap amendment is regressive, meaning that individuals with lower incomes will bear a disproportionate share of the tax burden.

Fundamentally, any General Assembly—whether conservative or progressive, Republican or Democrat—that uses its legislative power over redistricting to unconstitutionally select its own voters should not be permitted to entrench its policy preferences in the organic law of this State. Enforcing the constitutional guarantee of popular sovereignty in this fashion will protect against future attempts of any faction to use the machinery of governmental power to entrench itself against the will of the electorate. More importantly, holding that an illegitimate legislature cannot initiate constitutional

amendments will promote and safeguard the popular, representative sovereignty guaranteed to the people in the North Carolina Constitution.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the trial court's 22 February 2019 Order declaring the constitutional amendments initiated by Session Laws 2018-117 and 2018-128 void and of no effect.

Respectfully submitted this the 12th day of July, 2019.

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF COMPLIANCE

Pursuant to N.C. R. App. P. 28(j), counsel for Governor Cooper certifies that the foregoing brief, which is prepared using a proportionally spaced font with serifs, is no more than 3,750 words (excluding cover, captions, indexes, tables of authorities, certificates of service, this certificate of compliance, counsel's signature block, and appendixes) as reported by the word-processing software used to prepare this brief.

/s/ Daniel F. E. Smith
Daniel F. E. Smith

CERTIFICATE OF SERVICE

This is to certify that the undersigned counsel has this day served the foregoing document in the above-captioned action on all parties to this cause by depositing the original and/or a copy hereof, postage prepaid, in the United States Mail, addressed to the following:

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This the 12th day of July, 2019.

/s/ Daniel F. E. Smith
Daniel F. E. Smith